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August 6, 2025

***VIA ECF AND EMAIL***

Hon. Jerrold N. Poslusny, Jr.  
Mitchell H. Cohen U.S. Courthouse  
400 Cooper Street, 4th Floor  
Courtroom 4C  
Camden, NJ 08101

**Re: Daryl Fred Heller  
Case No. 25-11354 (JNP)**

Dear Judge Poslusny:

My office is counsel to Prestige Funds. On behalf of non-parties Jerry Hostetter, Buck Joffrey, William Poole, and Dave Zook (collectively, “the Recipients”), we write to object to subpoenas directed to each of them (the “Subpoenas”).<sup>1</sup> Debtor’s counsel emailed the Subpoenas to the my office **at 3:47 PM yesterday**, less than 20 hours before today’s hearing. *See* Exhibit A. Debtor is attempting to force the Recipients to attend today’s hearing at 11:00 AM in Camden, New Jersey, regarding two pending 9019 Motions [ECF No. 213 & 258]. Mr. Hostetter, Mr. Poole, and Mr. Zook all live in central Pennsylvania; **Mr. Joffrey lives in Santa Barabara, California**, several thousand miles away.

The Court scheduled the hearing today by Order dated July 7, 2025. [ECF No. 374.] In the intervening month since the Court issued the Order, Debtor’s counsel did not issue subpoenas to the Recipients to attend. Instead, the first notice of any kind the Recipients received that Debtor was interested in their live testimony was when Debtor listed them on “Debtor’s Witness List,” which was served at 4:23 PM on Monday, August 4, less than 48 hours ago. *See* Exhibit B. When Debtor’s counsel asked if the Recipients would attend, the undersigned advised that they would not because: (1) they were not subpoenaed, noting that the Recipients were all out of state and received only short notice; (2) they do not have relevant information for purposes of the 9019 hearing; and (3) even if they did have information, Debtor doesn’t need testimony from all four Recipients. *See* Exhibit A. Yet rather than stand down, Debtor issued four subpoenas within less than 20 hours of notice, including, again, one to a non-party that Debtor knows lives and works in California. Let that sink in: Debtor demanded a mere few hours ago that a non-party drop everything and book a cross-country flight to attend this morning’s hearing. That sounds an awful lot like an intent to burden and harass rather than an intent to seek relevant information.

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<sup>1</sup> The Prestige Funds, claimants in this matter, are each manager-managed LLCs. The Recipients are each either members of the manager LLCs or members of members in the manager LLCs.

Against the above, and given the lack of time to submit a formal motion, the Recipients ask the Court to consider this letter and immediately quash the subpoena.

Thank You for Your Honor's attention to this matter.

Respectfully,

STARK & STARK  
A Professional Corporation

BY: /s/ Joseph H. Lemkin, Esq.  
Joseph H. Lemkin, Esq.

cc: Sari Placona (via email and ECF)  
Heidi Sorvino (via ECF)  
Joshua Voss, Esq. (via email)  
Marshall T. Kizner, Esq. (via email)

## EXHIBIT “A”

## Joseph H. Lemkin

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**From:** Stacy L. Lipstein <slipstein@msbnj.com>  
**Sent:** Tuesday, August 5, 2025 3:47 PM  
**To:** Sari B. Placona; Marshall T. Kizner  
**Cc:** Heidi Sorvino; John D. Stern; Anthony Sodono; Joseph H. Lemkin  
**Subject:** [EXTERNAL] RE: Heller 9019 hearing  
**Attachments:** Buck Joffrey Subpoena.pdf; David Zook Subpoena.pdf; Jerry Hostetter Subpoena.pdf; William Poole Subpoena.pdf

Good afternoon Mr. Kizner,

In connection with the email below from Ms. Placona, please find Subpoenas to Appear and Testify at a Hearing or Trial in a Bankruptcy Case addressed to Jeffrey Hostetter, David Zook, William Poole, Buck Joffrey.

Please be guided accordingly.

Stacy L. Lipstein  
Legal Assistant to:  
Sari B. Placona | Joshua H. Raymond  
**McManimon, Scotland & Baumann, LLC**  
75 Livingston Avenue | 2nd Floor | Roseland, NJ 07068  
**Direct Dial:** 973-721-5043  
**Email:** [SLipstein@MSBNJ.COM](mailto:SLipstein@MSBNJ.COM)  
[Website](#)

**Connect with MS&B on** [LinkedIn](#) | [Twitter](#) | [Instagram](#)

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**From:** Sari B. Placona <SPlacona@MSBNJ.COM>  
**Sent:** Tuesday, August 5, 2025 3:17 PM  
**To:** Marshall T. Kizner <mkizner@stark-stark.com>  
**Cc:** Heidi Sorvino <sorvinoh@whiteandwilliams.com>; John D. Stern <jstern@msbnj.com>; Anthony Sodono <ASodono@MSBNJ.COM>; Joseph H. Lemkin <jlemkin@stark-stark.com>; Stacy L. Lipstein <slipstein@msbnj.com>  
**Subject:** RE: Heller 9019 hearing

Marshall

You know very well that the parties' witness lists were due yesterday not weeks ago. Further, if one person can attend, that would be sufficient.

Thanks.

Sari B. Placona | [Attorney Bio](#)  
Partner  
**McManimon, Scotland & Baumann, LLC**  
75 Livingston Avenue | 2nd Floor | Roseland, NJ 07068  
**Direct Dial:** 973-721-5030  
**Email:** [SPlacona@MSBNJ.COM](mailto:SPlacona@MSBNJ.COM)  
[Website](#)

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**From:** Marshall T. Kizner <[mkizner@stark-stark.com](mailto:mkizner@stark-stark.com)>

**Sent:** Tuesday, August 5, 2025 3:10 PM

**To:** Sari B. Placona <[SPlacona@MSBNJ.COM](mailto:SPlacona@MSBNJ.COM)>

**Cc:** Heidi Sorvino <[sorvinoh@whiteandwilliams.com](mailto:sorvinoh@whiteandwilliams.com)>; John D. Stern <[jstern@msbnj.com](mailto:jstern@msbnj.com)>; Anthony Sodono <[ASodono@MSBNJ.COM](mailto:ASodono@MSBNJ.COM)>; Joseph H. Lemkin <[jlemkin@stark-stark.com](mailto:jlemkin@stark-stark.com)>

**Subject:** RE: Heller 9019 hearing

Sari:

The non-parties you put on your witness list never received timely subpoenas to attend an evidentiary hearing on your client's motion to approve two settlements. This hearing was scheduled over a month ago and only less than 48 hours before the hearing did you first provide any indication that these non-parties would be witnesses. In other words, you had plenty of time to serve subpoenas on these non-parties if you wanted them to attend. As you know, all of these persons are hours away from the courthouse and one resides in California. Consequently, the non-parties you put on your list will not be in attendance tomorrow.

Moreover, even if you had issued timely subpoenas, they would have been objected to. These non-parties could not possibly have relevant information to the matter before the court (i.e., the business judgment of your client). Moreover, even if they did have relevant information, you wouldn't need all four out-of-state non-parties to attend a hearing in New Jersey. If you insist that these non-parties need to participate, then feel free to adjourn the hearing and issue proper subpoenas.

Further, it flies in the face of common sense that your client would not be on the witness list to support his business judgment.

Thanks,

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**From:** Sari B. Placona <[SPlacona@MSBNJ.COM](mailto:SPlacona@MSBNJ.COM)>

**Sent:** Tuesday, August 5, 2025 2:14 PM

**To:** Marshall T. Kizner <[mkizner@stark-stark.com](mailto:mkizner@stark-stark.com)>

**Cc:** Anthony Sodono <[ASodono@MSBNJ.COM](mailto:ASodono@MSBNJ.COM)>; Heidi Sorvino <[sorvinoh@whiteandwilliams.com](mailto:sorvinoh@whiteandwilliams.com)>; John D. Stern <[jstern@msbnj.com](mailto:jstern@msbnj.com)>

**Subject:** [EXTERNAL] Re: Heller 9019 hearing

Marshall

I have not heard back from you.

As we were just on with the court I asked you if you got my email about my witnesses.

You answered my with a smirk remark asking when Daryl will be there.

Are you available for a call now?

We will send over trial subpoenas now

Please let me know.

From Sari B. Placona, Esq.

Sent from my iPhone

On Aug 5, 2025, at 10:01 AM, Sari B. Placona <[SPlacona@msbnj.com](mailto:SPlacona@msbnj.com)> wrote:

Marshall

Morning

I assume you saw my witness list which lists your 4 clients as witnesses. Please confirm they will be there tomorrow or will you accept service of a trial subpoena?

Thank you.

Sari B. Placona | [Attorney Bio](#)  
Partner  
**McManimon, Scotland & Baumann, LLC**  
75 Livingston Avenue | 2nd Floor | Roseland, NJ 07068  
**Direct Dial:** 973-721-5030  
**Email:** [SPlacona@MSBNJ.COM](mailto:SPlacona@MSBNJ.COM)  
[Website](#)

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## EXHIBIT “B”

**From:** [Sari B. Placona](#)  
**To:** [Chambers of JNP](#)  
**Cc:** [Anthony Sodono](#); [Albert A. Ciardi III](#); [Catalanello, Gerard](#); [Schiffman, Kimberly](#); [Vincequerra, James](#); [Wieder, Jonathan](#); [Cohen, Seth](#); [Chaljub, Enrique](#); [Marshall T. Kizner](#); [Joshua Voss](#); [Joseph H. Lemkin](#); [richard.kanowitz@haynesboone.com](#); [Kulback, Jerrold S.](#); [Marc D. Miceli](#); ["Don Clarke"](#); [Heidi Sorvino](#); [Daniel Siedman](#); [Jeffrey.M.Sponder@usdoj.gov](#)  
**Subject:** In re Heller - 25-11354; 9019 Hearing on August 6, 2025  
**Date:** Monday, August 4, 2025 4:23:03 PM  
**Attachments:** [Deerfield 9019 - exhibit list 4906-5076-4378 v.1.pdf](#)  
[Debtor Exhibit 3 - deerfield 9019.pdf](#)  
[Debtor Exhibit 6 - deerfield 9019.pdf](#)  
[Debtor Exhibit 5 - deerfield 9019.pdf](#)  
[Debtor Exhibit 2 - deerfield 9019.pdf](#)  
[Debtor Exhibit 4 - deerfield 9019.pdf](#)  
[Debtor Exhibit 1 - deerfield 9019.pdf](#)

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Dear Judge Poslusny, Jr.

This firm counsel is counsel to Daryl Heller, the Chapter 11 Debtor (the "Debtor"), in the above referenced matter.

In accordance with ECF 364, attached is a copy of the Debtor's pre marked exhibits and witness list in advance of Wednesday's hearing.

The Debtor reserves right to cross examine any witnesses that are called by any other party. The Debtor also reserves its right to amend and/or supplement its witness list and exhibit list.

Thank you for the Court's consideration.

Respectfully,

Sari B. Placona | [Attorney Bio](#)  
Partner  
**McManimon, Scotland & Baumann, LLC**  
75 Livingston Avenue | 2nd Floor | Roseland, NJ 07068  
**Direct Dial:** 973-721-5030  
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**9019 SETTLEMENT WITH DEERFIELD CAPITAL**

**DEBTOR'S EXHIBIT LIST**

1. Proof of Claim #38 of Deerfield Capital
2. Adversary Proceeding Complaint – 25-01092
3. Motion for Stay Relief [ECF 9]
4. Motion to Appoint Trustee [ECF 30]
5. Term Sheet Agreement
6. Certification of Daryl Heller – [ECF 258-2]

**DEBTOR'S WITNESS LIST**

1. Jerry Hostetter
2. David Zook
3. William Poole
4. Buck Joffrey